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**BEFORE THE
PHYSICAL THERAPY BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

THOMAS MICHAEL WERDERITS
509 Gaynfair Terrace
Arroyo Grande, CA 93420

Physical Therapist License No. PT 20192

Respondent.

Case No. 1D 2004 63822

A C C U S A T I O N

Complainant alleges:

PARTIES

1. Steven K. Hartzell (Complainant) brings this Accusation solely in his official capacity as the Executive Officer of the Physical Therapy Board of California, Department of Consumer Affairs.

2. On or about September 14, 1994, the Physical Therapy Board of California issued Physical Therapist License Number PT 20192 to Thomas Michael Werderits (Respondent). The Physical Therapist License was in full force and effect at all times relevant to the charges brought herein and will expire on September 30, 2004, unless renewed.

JURISDICTION

3. This Accusation is brought before the Physical Therapy Board of California (Board), Department of Consumer Affairs, under the authority of the following laws. All section

1 references are to the Business and Professions Code unless otherwise indicated.

2 4. Section 2609 of the Code states:

3 The board shall issue, suspend, and revoke licenses and approvals to practice physical
4 therapy as provided in this chapter.

5 5. Section 2660 of the Code states:

6 The board may, after the conduct of appropriate proceedings under the Administrative
7 Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions
8 upon, or issue subject to terms and conditions any license, certificate, or approval issued under this
9 chapter for any of the following causes:

10 (a) Advertising in violation of Section 17500.

11 (b) Fraud in the procurement of any license under this chapter.

12 (c) Procuring or aiding or offering to procure or aid in criminal abortion.

13 (d) Conviction of a crime which substantially relates to the qualifications,
14 functions, or duties of a physical therapist. The record of conviction or a certified
15 copy thereof shall be conclusive evidence of that conviction.

16 (e) Impersonating or acting as a proxy for an applicant in any examination
17 given under this chapter.

18 (f) Habitual intemperance.

19 (g) Addiction to the excessive use of any habit-forming drug.

20 (h) Gross negligence in his or her practice as a physical therapist.

21 (i) Conviction of a violation of any of the provisions of this chapter or of the
22 State Medical Practice Act, or violating, or attempting to violate, directly or
23 indirectly, or assisting in or abetting the violating of, or conspiring to violate any
24 provision or term of this chapter or of the State Medical Practice Act.

25 (j) The aiding or abetting of any person to violate this chapter or any
26 regulations duly adopted under this chapter.

27 (k) The aiding or abetting of any person to engage in the unlawful practice
28 of physical therapy.

1 (l) The commission of any fraudulent, dishonest, or corrupt act which is
2 substantially related to the qualifications, functions, or duties of a physical therapist.

3 (m) Except for good cause, the knowing failure to protect patients by failing
4 to follow infection control guidelines of the board, thereby risking transmission of
5 blood-borne infectious diseases from licensee to patient, from patient to patient, and
6 from patient to licensee. In administering this subdivision, the board shall consider
7 referencing the standards, regulations, and guidelines of the State Department of
8 Health Services developed pursuant to Section 1250.11 of the Health and Safety
9 Code and the standards, regulations, and guidelines pursuant to the California
10 Occupational Safety and Health Act of 1973 (Part 1 (commencing with Section 6300)
11 of Division 5 of the Labor Code) for preventing the transmission of HIV, Hepatitis
12 B, and other blood-borne pathogens in health care settings. As necessary, the board
13 shall consult with the Medical Board of California, the California Board of Podiatric
14 Medicine, the Board of Dental Examiners of California, the Board of Registered
15 Nursing, and the Board of Vocational Nursing and Psychiatric Technicians, to
16 encourage appropriate consistency in the implementation of this subdivision.

17 The board shall seek to ensure that licensees are informed of the responsibility of
18 licensees and others to follow infection control guidelines, and of the most recent scientifically
19 recognized safeguards for minimizing the risk of transmission of blood-borne infectious diseases.

20 6. Section 2661.5 of the Code states:

21 (a) In any order issued in resolution of a disciplinary proceeding before the
22 board, the board may request the administrative law judge to direct any licensee
23 found guilty of unprofessional conduct to pay to the board a sum not to exceed the
24 actual and reasonable costs of the investigation and prosecution of the case.

25 (b) The costs to be assessed shall be fixed by the administrative law judge
26 and shall not in any event be increased by the board. When the board does not adopt
27 a proposed decision and remands the case to an administrative law judge, the
28 administrative law judge shall not increase the amount of the assessed costs specified

1 in the proposed decision.

2 (c) When the payment directed in an order for payment of costs is not made
3 by the licensee, the board may enforce the order of payment by bringing an action in
4 any appropriate court. This right of enforcement shall be in addition to any other
5 rights the board may have as to any licensee directed to pay costs.

6 (d) In any judicial action for the recovery of costs, proof of the board's
7 decision shall be conclusive proof of the validity of the order of payment and the
8 terms for payment.

9 (e) (1) Except as provided in paragraph (2), the board shall not renew or
10 reinstate the license or approval of any person who has failed to pay all of the
11 costs ordered under this section.

12 (2) Notwithstanding paragraph (1), the board may, in its discretion,
13 conditionally renew or reinstate for a maximum of one year the license or
14 approval of any person who demonstrates financial hardship and who enters
15 into a formal agreement with the board to reimburse the board within that one
16 year period for those unpaid costs.

17 (f) All costs recovered under this section shall be deposited in the Physical
18 Therapy Fund as a reimbursement in either the fiscal year in which the costs are
19 actually recovered or the previous fiscal year, as the board may direct.

20 FIRST CAUSE FOR DISCIPLINE

21 (Gross Negligence)

22 7. Respondent is subject to disciplinary action under section 2660, subdivision
23 (h), of the Code in that respondent was grossly negligent in the practice of physical therapy. The
24 circumstances are as follows:

25 A. On or about March 31, 2004, respondent saw patient A.S. at Marion Hospital
26 Home Care in Santa Maria, California, to provide physical therapy services. While
27 respondent was in patient A.S.'s room, he removed nine tablets of Percocet from a
28 prescription medication container of patient A.S.

1 B. Percocet is a brand name for oxycodone, a narcotic analgesic and a Schedule
2 II controlled substance under Health and Safety Code section 11055(b)(1)(N) and a
3 dangerous drug under Business and Professions Code section 4022.

4 C. On or about April 1, 2004, respondent saw patient A.S. at Marion Hospital
5 Home Care in Santa Maria, California, to provide physical therapy services. When
6 respondent was observed removing patient A.S.'s medication container from a cabinet, he
7 was confronted by patient A.S. and her caregiver. Respondent stated that he was taking the
8 medication for his wife who had severe back pain.

9 D. On or about May 28, 2004, respondent stated to an investigator from the
10 Department of Consumer Affairs, Division of Investigation, that he had taken the medication
11 on or about March 31, 2004, from patient A.S. for self-use. Respondent stated at that time
12 that he had been using alcohol and drugs to excess for years.

13 E. On or about March 31, 2004 and April 1, 2004, respondent was grossly
14 negligent when he took or attempted to take prescription pain medication from patient A.S.
15 for his own use.

16 SECOND CAUSE FOR DISCIPLINE

17 (Addiction to the Excessive Use of any Habit-forming Drug)

18 8. Respondent is subject to disciplinary action under section 2660, subdivision
19 (g), of the Code in that respondent is addicted to the excessive use of a habit-forming drug. The
20 circumstances are as follows:

21 A. The facts and allegations in paragraph 7 above are incorporated here as if fully
22 set forth.

23 THIRD CAUSE FOR DISCIPLINE

24 (Fraudulent, Dishonest or Corrupt Act)

25 9. Respondent is subject to disciplinary action under section 2660, subdivision
26 (l) of the Code, in that respondent committed fraudulent, dishonest, or corrupt acts which are
27 substantially related to the qualifications, functions, or duties of a physical therapist. The
28 circumstances are as follows:

1 A. The facts and circumstances set forth in paragraph 7 above are incorporated
2 here as if fully set forth.

3 FOURTH CAUSE FOR DISCIPLINE

4 (Unprofessional Conduct)

5 10. Respondent is subject to disciplinary action under section 2660 of the Code
6 in that respondent committed engaged in unprofessional conduct. The circumstances are as
7 follows:

8 A. The facts and allegations set forth in paragraphs 7 through 9 above are
9 incorporated here as if fully set forth.

10 PRAYER

11 WHEREFORE, Complainant requests that a hearing be held on the matters herein
12 alleged, and that following the hearing, the Physical Therapy Board of California issue a decision:

13 1. Revoking or suspending Physical Therapist License Number PT 20192, issued
14 to Thomas Michael Werderits;

15 2. Ordering Thomas Michael Werderits to pay the Physical Therapy Board of
16 California the reasonable costs of the investigation and enforcement of this case, pursuant to
17 Business and Professions Code section 2661.5;

18 3. Taking such other and further action as deemed necessary and proper.

19 DATED: 08/19/2004.

20
21 Original Signed By: _____
22 STEVEN K. HARTZELL
23 Executive Officer
24 Physical Therapy Board of California
25 Department of Consumer Affairs
26 State of California
27 Complainant
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Werderits Accusation.wpd